

Appl. No. : 09/698,489
Filed : October 26, 2000

REMARKS

A. Introduction

Applicant respectfully requests reconsideration and allowance of this application. Claims 1, 7, 10, 62 and 66-129 and are pending in the application. As shown above, Applicant has amended Claims 1 and 62, and added Claims 79-129 to further clarify Applicant's claimed invention. On the above pages, the [deletions are bracketed] while the insertions are underlined.

The Examiner indicated that Claims 10, 64 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant respectfully asserts that Claim 1, as amended, is allowable. Below, Applicant provides a reasoned statement in support of the patentability of Claim 1. Claims 7 and 10 are dependent upon Claim 1. Therefore, these claims are also allowable. Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Therefore, each claim is allowable in its own right.

Applicant has canceled Claim 64 and amended Claim 62 to include the limitations of Claim 64. Therefore, Claim 62 is allowable. Because Claim 72 is dependent upon Claim 62, Applicant respectfully asserts that this claim is also allowable. Furthermore, Claim 72 recites a unique combination of features not taught or suggested by the prior art. Therefore, Claim 72 is allowable in its own right.

Applicant submits that this application is now in condition for allowance and Applicant earnestly requests such action. Below, Applicant addresses each of the Examiner's reasons for rejection.

B. All Claims are Patentable Over the Cited References

Merlette - § 102 Rejections

The Examiner rejected Claims 1, 7, 62, 63, 66-71 and 73-78 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,959,073 to Merlette. Applicant has canceled Claim 63, thus obviating this rejection with respect to this claim. Applicant respectfully submits that the remaining claims, as amended, are allowable over Merlette.

An anticipation rejection under § 102 requires that "every element of the claimed invention must be identically shown in a single reference." *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). "There must be no difference between the claimed invention and the reference disclosure,

as viewed by a person of ordinary skill in the field of the invention.” *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991).

Various preferred embodiments of the present application define, *inter alia*, a prosthetic foot comprising a foot plate element, at least one ankle plate element, and an ankle block sandwiched between the ankle plate element and the foot plate element. The foot plate element comprises a resilient material capable of flexing along its length. The ankle block comprises a relatively soft, compressible material. The ankle block provides substantially the sole means of support and connection between the foot plate element and the ankle plate element. At least one opening preferably extends at least partially through the ankle block.

Various other preferred embodiments of the present application define, *inter alia*, a prosthetic foot comprising a foot plate element, at least one ankle plate element disposed above the foot plate element, and at least one foam ankle block positioned between the ankle plate element and the foot plate element. The ankle block includes at least one opening extending at least partially through the ankle block.

By contrast, Merlette discloses a foot prosthesis comprising an elongate composite main member. The main member has a leg section and a toe section. One end of the leg section is adapted to be connected to an amputation socket. The other end curves smoothly forward through an ankle section into the toe section, and extends to a toe end. A heel member extends from the toe end rearwardly, generally along the toe section, and then diverges from the toe section and extends to a heel tip. The main member and heel member are preferably constructed of one piece, with continuous fibers of the composite material extending through the main member and around the toe tip and through the heel member. A resilient material, such as rubber, is bonded between the toe section and the heel member where the two are generally adjacent. The properties of the resilient material may be made adjustable by the wearer where the toe section and heel member diverge.

↘ Merlette does not disclose a prosthetic foot comprising a foot plate element, at least one ankle plate element, and an ankle block sandwiched between the ankle plate element and the foot plate element, wherein the ankle block provides substantially the sole means of support and connection between the foot plate element and the ankle plate element. Referring to Figure 1 of Merlette, column 3, lines 58-63 recite: “Main member 10 is of single piece composite construction and preferably member 20 is constructed as a continuation of main member 10 so

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*Functioned
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that the leg section 12, ankle section 14, toe section 16 and heel member 20 are formed as a single piece." Thus, the resilient material 24 that is adhered between the adjacent portions of the toe section 16 and the heel member 20 clearly does not provide substantially the sole means of support and connection between the toe section 16 and the heel member 20. The toe section 16 and the heel member 20 are connected to one another at the toe tip 18.

There are numerous advantages of an ankle block that provides substantially the sole means of support and connection between a foot plate element and an ankle plate element. For example, such an ankle block acts as a fully functional ankle. It is able to flex in all directions just as a natural human ankle does.

Since Merlette does not disclose a prosthetic foot comprising an ankle block that provides substantially the sole means of support and connection between a foot plate element and an ankle plate element, Applicant respectfully submits that independent Claim 1 is not anticipated by Merlette. Dependent Claim 7, which includes the features of independent Claim 1, recites additional features of particular advantage and utility. Moreover, this claim is allowable for substantially the same reasons presented above. Merlette does not disclose all of the limitations of Claim 1, let alone the unique combination of features recited by Claim 7. Accordingly, Applicant respectfully requests that the Examiner withdraw these rejections.

Applicant has amended Claim 62 to include the limitations of Claim 64, which the Examiner has already indicated to be allowable. Thus, Applicant respectfully asserts that Claim 62 is allowable. Dependent Claims 66-71 and 73-78 include the features of independent Claim 62. Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Thus, Applicant respectfully asserts that these claims are also allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw these rejections.

Merlette - §103 Rejections

The Examiner rejected Claim 65 under 35 U.S.C. § 103(a) as being unpatentable over Merlette. Applicant has canceled Claim 65, thus obviating this rejection.

New Claims 79-129

Applicant has added Claims 79-129 to further clarify Applicant's claimed invention. Applicant respectfully asserts that these claims are allowable over the prior art. Claims 79-81 are dependent upon Claim 1, which Applicant respectfully asserts is allowable, as described above.

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Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Accordingly, Applicant respectfully asserts that Claims 79-81 are allowable.

New Claim 82 recites a prosthetic foot comprising a foot plate element, at least one ankle plate element disposed above the foot plate element, and at least one ankle block positioned between the ankle plate element and the foot plate element. New Claim 82 further recites that the ankle block has a thickness of no less than about one-half inch over an entire length thereof, and the ankle block includes at least one opening extending at least partially therethrough. None of the references currently of record, either alone or in combination, disclose the combination of features recited in New Claim 82. Thus, Applicant respectfully asserts that this claim is allowable. Dependent Claims 83-98 include the features of independent Claim 82. Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Thus, Applicant respectfully asserts that these claims are also allowable. Applicant respectfully requests that the Examiner allow Claims 82-98.

New Claim 99 recites a prosthetic foot comprising a foot plate element, at least one ankle plate element disposed above the foot plate element, and at least one ankle block positioned between the ankle plate element and the foot plate element. New Claim 99 further recites that the foot plate element and the ankle plate element comprise discrete elements, and the ankle block includes at least one opening extending at least partially therethrough. None of the references currently of record, either alone or in combination, disclose the combination of features recited in New Claim 99. Thus, Applicant respectfully asserts that this claim is allowable. Dependent Claims 100-113 include the features of independent Claim 99. Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Thus, Applicant respectfully asserts that these claims are also allowable. Applicant respectfully requests that the Examiner allow Claims 99-113.

New Claim 114 recites a prosthetic foot comprising a foot plate element, at least one ankle plate element disposed above the foot plate element, and at least one ankle block positioned between the ankle plate element and the foot plate element. New Claim 114 further recites that at least a forward extent of the ankle plate element is spaced from the foot plate element, and the ankle block includes at least one opening extending at least partially therethrough. None of the references currently of record, either alone or in combination, disclose the combination of features recited in New Claim 114. Thus, Applicant respectfully asserts that

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this claim is allowable. Dependent Claims 113-129 include the features of independent Claim 114. Furthermore, these claims recite unique combinations of features not taught or suggested by the prior art. Thus, Applicant respectfully asserts that these claims are also allowable. Applicant respectfully requests that the Examiner allow Claims 114-129.

CONCLUSION

For the reasons presented above, Applicant respectfully submits that this application, as amended, is in condition for allowance. If there is any further hindrance to allowance of the pending claims, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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